

D.T.E. 02-73

Petition of Bay State Gas Company, pursuant to G.L. c. 164, §§ 14, 15, and 16, to incur long-term debt in the principal amount of up to \$50,000,000 and to be exempt from the advertising and competitive bid requirements of G.L. c. 164, § 15.

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FOR: BAY STATE GAS COMPANY  
Petitioner

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FOR: UTILITY WORKERS UNION OF AMERICA,  
AFL-CIO, LOCAL 273  
Limited Participant

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## I. INTRODUCTION

On November 8, 2002, Bay State Gas Company (“Bay State” or “Company”) filed with the Department of Telecommunications and Energy a request to issue long-term debt to its affiliate NiSource Finance Corporation (“NiSource Finance”) in the aggregate amount not to exceed \$50,000,000, at face value, with an interest rate not to exceed 7.75 percent and a term not to exceed twenty years. The Company seeks this financing to pay down its short-term debt and to refinance its maturing long-term debt issuances that have been previously used for ongoing utility purposes. The Department docketed this matter as D.T.E. 02-73.

On December 3, 2002, the Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention. In addition, Local 273, Utility Workers Union of America, AFL-CIO (“Local 273”) filed a petition to intervene on December 5, 2002, and Southern Union Company (“Southern Union”) filed a petition for limited participant status on December 10, 2002. Local 273 and Southern Union were granted limited participant status on December 11, 2002 and December 12, 2002, respectively.<sup>1</sup>

Pursuant to notice duly issued, the Department held public and evidentiary hearings at the Department’s offices on December 12, 2002. At the evidentiary hearing, the Company presented one witness in support of its petition: Vincent Rea, Assistant Treasurer of Bay State. Bay State, the Attorney General, and Local 273 filed briefs on December 23, 2002. The

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<sup>1</sup> Local 273 filed an appeal of the Hearing Officer ruling dated December 11, 2002, which denied it intervenor status. The Hearing Officer ruling will be reviewed in Section II.

evidentiary record consists of 47 exhibits, five responses to the Department record requests, and eight responses to the Attorney General record requests.

## II. OUTSTANDING PROCEDURAL MATTERS

### A. Local 273's Appeal of Hearing Officer's Ruling

On December 11, 2002, the Hearing Officer issued a ruling denying Local 273's petition for full intervenor status but allowing Local 273 limited participant status. Bay State Gas Company, D.T.E. 02-73, at 1, Hearing Officer Ruling (December 11, 2002) ("Hearing Officer Ruling"). The Hearing Officer stated that Local 273 was not substantially and specifically affected by the outcome in this proceeding. Id. The Hearing Officer, however, granted Local 273 limited participant status in this proceeding, which enabled Local 273 to submit information requests to the Company prior to the evidentiary hearing and briefs at the conclusion of the evidentiary hearings. Id.

On December 20, 2002, Local 273 appealed the Hearing Officer Ruling to the full commission ("Appeal"). Local 273 states several reasons in support of its intervention that echo the reasons stated in its original petition to intervene. These reasons include the following: (1) Local 273's decline in its membership due to job loss allegedly because of the financial difficulties of Bay State's parent company; (2) the potential for higher rates for Local 273's members that are Bay State ratepayers; and (3) Local 273's prior participation in Department proceedings (Appeal at 1-2.)

On December 23, 2002 the Attorney General filed a letter in support of Local 273's Appeal ("AG Letter"). The Attorney General reiterates Local 273's claim that the Department has a long established precedent of allowing unions to participate fully (AG Letter at 2).

On December 24, 2002, Bay State filed an opposition to Local 273's Appeal ("Opposition"). Bay State argues that the Hearing Officer Ruling should not be reversed because there is no link between Bay State's proposed financing and (1) the decline in Local 273's membership, (2) any potential increased cost of service, and (3) Local 273's prior participation in Department proceedings (Opposition at 3).

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. § 1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. Attorney General v. Department of Public Utilities, 390 Mass. 208, 216 (1983); Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also Robinson v. Department of Public Utilities, 835 F. 2d 19 (1<sup>st</sup> Cir. 1987).

Local 273's claims that it has sustained a decline in its membership due to job loss because of the financial difficulties of Bay State's parent company and that some of its members as ratepayers may pay increased rates are no more than generalized claims that financing arrangements affect union membership. Local 273 has not established the necessary link

between the proposed refinancing of \$50,000,000 of long-term debt and how that financing would affect Bay State's union employees.

Finally, Local 273 claims that its participation in other proceedings require it be granted full participant status in this proceeding. This argument ignores our statutory and regulatory requirements that would-be intervenors must show that they meet the Department's intervention standards each time they request to intervene in a proceeding. See, e.g., G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(b).

The Department finds that the Hearing Officer Ruling was neither made in error nor an abuse of discretion. Therefore, Local 273's Appeal is denied.

B. Bay State's Motion to Strike

On December 23, 2002, Bay State, Local 273, and the Attorney General filed briefs regarding the issues in this proceeding. On December 26, 2002, Bay State filed a motion to strike portions of Local 273's brief ("Motion"). On December 27, 2002, Local 273 filed an opposition to that motion ("Opposition to Motion to Strike").

In its Motion, Bay State requests that the Department strike the portion of Local 273's brief that (1) refers to unsworn testimony at the public hearing on December 12, 2002, and (2) requests the Department undertake an investigation of Bay State's financial condition and management (Motion at 1-2). Bay State argues these portions of the brief are based on extra-record evidence and matters unrelated to the scope of this proceeding, respectively (id. at 2-4).

Local 273 responds to Bay State's Motion by noting that Department regulations specifically recognize that individuals may make unsworn statements appearing in the record of a case and that its request for an investigation relies upon four record sources and the Department's discretion to open an investigation on its own motion (Opposition to Motion to Strike at 1-4).

With respect to Bay State's request that the Department strike that portion of Local 273's brief that refers to an unsworn statement at the public hearing on December 12, 2002, the Department's regulations specifically recognize that individuals may make unsworn statements which will appear in the record of a case even though these statements shall not be considered as evidence on which a decision may be based. 220 C.M.R. § 1.10(1). Local 273 is not asking that any unsworn statement be considered as evidence, and the Department will not strike the mere recitation of an unsworn statement at a public hearing in a brief's introductory summary.

With respect to Bay State's request that the Department strike that portion of Local 273's brief that requests the Department undertake an investigation of Bay State's financial condition and management, the Department notes that it has general supervision over all gas companies and shall make all necessary examination and inquiries into the manner in which they conduct business. G.L. c. 164, § 76. In fact, the Department has recently exercised this supervisory role with respect to Bay State by requiring it to expedite its annual service quality report. Letter to Bay State Gas Company dated December 30, 2002. The Department will not prevent Local 273 from requesting that the Department exercise its

discretionary powers. Therefore, the Department will not strike Local 273's request that the Department undertake an investigation of Bay State's financial condition and management.

In conclusion, the Department will not strike the portion of Local 273's brief that (1) refers to an unsworn statement at the public hearing on December 12, 2002, and (2) requests the Department undertake an investigation of Bay State's management. Therefore, Bay State's Motion is denied.

### III. DESCRIPTION OF THE PROPOSED FINANCING

#### A. Long-term Debt

Bay State proposes to issue to its affiliate NiSource Finance an unsecured note or series of notes ("Note") in an aggregate amount not to exceed \$50,000,000, at face value. The Note will carry an interest rate not to exceed 7.75 percent and have a term not to exceed twenty years (Exhs. BSG-1, at 1; BSG-2, at 3; Tr. at 15). The Company claims that current market conditions support the use of a ten-year maturity for the Note, with a resulting interest rate of approximately 6.75 percent (Tr. at 17, 52-53). Although the precise interest rate and term of the Note remain to be determined, the Company has provided a draft promissory note to the Department and has stated that it will provide the Department with a copy of the final version of the Note promptly upon execution within ten (10) days of its issuance pursuant to G. L. c. 164, § 85A (Exh. BSG-1, at 1-3; DTE-RR-2).

The Company states that the proceeds from the Note will be used to pay down short term debt and refinance long-term debt that has matured (Exhs. BSG-1, at 2; BSG-2, at 3). According to the Company, approximately \$53,000,000 in long-term debt matured at the end

of 2002, which Bay State has been temporarily financing with short term debt pending a Department decision on its proposed appropriate refinancing (Exh. BSG-2, at 3).

B. Capital Structure

As of September 30, 2002, the Company reported a gross utility plant of \$708,069,613 (Exh. BSG-8). After removing \$241,286,711 in accumulated depreciation, the Company had a net utility plant of \$466,782,902 (id.).

As of September 30, 2002, the Company reported a total capitalization of \$289,519,666, consisting of \$123,498,000 in long-term debt,<sup>2</sup> \$100 in common stock, \$145,596,770 in paid-in capital, and \$20,424,796 in retained earnings (Exhs. BSG-1, BSG-6, BSG-8, BSG-9, Tr. at 146). Based on these balances, Bay State's capital structure consists of 57.34 percent equity and 42.66 percent debt capital.

C. Exemption from G.L. c. 164, § 15

Pursuant to G.L. c. 164, § 15 ("Section 15"), the Company requests that the Department grant an exemption from the advertising and competitive bid requirements of Section 15 (Exh. BSG-1, at 3-4). The Company claims that (1) the interest that the Note will

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<sup>2</sup> In its net plant test calculation, the Company initially excluded \$42,998,000 in long term debt scheduled to become due within one year, classifying this amount instead as "current maturities" (Exhs. BSG-4; BSG-5; Tr. at 146). The Department has previously found that the impending maturity of a long-term debt issue does not transform the obligation into short term debt. Commonwealth Electric Company, D.T.E. 02-51, at 6 (2001); Nantucket Electric Company, D.P.U. 91-106/138, at 96 n.23. See also, G.L. c. 164, § 14. Bay State agreed that it would be appropriate to include that portion of long-term debt scheduled to be paid within one year in the net plant test calculation (Tr. at 146). Therefore, the Department includes in the net plant test calculation the \$42,998,000 of long-term debt scheduled to be paid within one year.



bear is reflective of current market rates, (2) the size of the offering is small so that sufficient interest that would justify a bidding process can not be expected, (3) the financing, as proposed by the Company, provides it with financial flexibility, and (4) the financing, as proposed, provides cost savings to the Company in excess of \$500,000 (Exhs. BSG-1, at 3; BSG-2, at 4).

#### IV. POSITIONS OF THE PARTIES

##### A. Attorney General

Regarding the terms of the proposed financing, the Attorney General expresses concern about the Company's bond rating drop since its merger with NiSource, Inc. (Attorney General Brief at 3). The Attorney General states that the Department should reiterate that the Department's approval of the proposed financing should not be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing (id.). The Attorney General argues that the Department should require that the Company demonstrate in its next rate case whether it is reasonable for ratepayers to pay any additional costs that result from this proposed financing (id.).

Regarding the requested exemption from G.L. c. 164, § 15, the Attorney General states that the Department should either reject the Company's request for an exemption of the competitive bid requirements or address the absence of any measure of competition in Bay State's financing proposal (id. at 1). To correct for the absence of competition, the Attorney General suggests that the Department require the Company to borrow the \$50,000,000 from NiSource Finance under the same terms as NiSource Finance receives in the competitive marketplace (id. at 1-2, citing Southern Union Company, D.T.E. 01-80 (2001)).

B. Local 273

Regarding the terms of the proposed financing, Local 273 expresses concern about the Company's bond rating drop since its merger with NiSource, Inc. (Local 273 Brief at 8-9). Local 273 states that the Department should reiterate that the Department's approval of the proposed financing should not be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing (id.). Local 273 also contends that the Department should not allow Bay State to issue 20 year bonds in light of the fact that the Company now could issue 10-year bonds at up to 6.75 percent, which would result in an interest rate savings of \$5,000,000. (id. at 11, citing Tr. 16-17, 53, 77 ).

Regarding the requested exemption from Section 15, Local 273 states that the Department should not allow the Company to be exempt from the statutory bid requirements because the Company has not made the requisite public interest showing (Local 273 Brief at 11-15). Local 273 argues that the Company is engaged in self-dealing, without any arms-length negotiations involved in the proposed financing (id. at 11-12). Local 273 also contends that the Company's proposed method for determining the ultimate interest rate on the loan is neither transparent nor readily verifiable (id. at 12-13, citing Exh. AG 1-10). Finally, Local 273 argues that if the Department grants Bay State a waiver from Section 15, it should do so only if the following conditions are met: (1) the Company files, with all parties, complete documentation and source materials on how it arrived at the relevant Treasury benchmark rate, including how the additional corporate yield spread was determined; (2) the Company provides a contemporaneous update of Exhibit DTE-15 to allow the Department to compare the

Company's selected interest rate to interest rates of other recent bonds; (3) the interest rate be limited to the interest rate associated with the next issuance of bonds by NiSource Finance; (4) the Department states that nothing in the granting of the waiver may be construed as a ruling on the appropriate ratemaking treatment of the bond interest expense; and (5) the granting of any waiver should be conditioned upon the opening of the investigation requested by Local 273 (Local 273 Brief at 14-15).

C. Bay State Gas Company

The Company argues that it has demonstrated that the debt issuance is necessary to accomplish a legitimate purpose in meeting the Company's service obligations pursuant to G. L. c. 164, § 14, in that it will use the proceeds of the Note to pay down short term debt and to refinance recently matured long-term debt (Company Brief at 5-6). The Company contends that these purposes are consistent with other financings approved by the Department (*id.* at 6, citing The Berkshire Gas Company, D.T. E. 98-129 (1999); New England Power Company, D.P.U. 95-101 (1995)).

The Company also argues that it will issue the debt at the lowest rate possible (Company Brief at 6). According to the Company, the interest rate of the Note will be determined by the corresponding applicable Treasury bond rate in effect at the time of the issuance, plus a premium associated with the corporation's risk profile (*id.* at 6). The Company asserts that, in accordance with Security and Exchange Commission regulations, the interest rate will reflect no mark-up by the lender, NiSource Finance (*id.* at 6).

In support of its request that it be exempt from the bid requirements for this particular issuance, Bay State argues that the amount of the financing is not sufficiently large enough to generate any interest in the external markets, and, therefore, the only other opportunity for financing this amount would be to conduct a private placement (id. at 6, citing Tr. at 147). The Company claims that if it had to resort to a private placement, the interest rates associated with either a ten- or twenty-year term would still be higher than those offered from NiSource Finance (Company Brief at 6, citing RR-AG-1; RR-AG-2). In addition, the Company contends that its proposed method of financing would allow it to avoid substantial transaction costs, including underwriting fees, fees associated with the preparation of a prospectus, rating agency fees, accounting fees, advertising expenses, auditing fees, and legal expenses, which Bay State estimates would be in the range of \$550,000 to \$825,000 (Company Brief at 7-8, citing Tr. at 78-80, 147-152). Therefore, the Company argues that the exemption from the requirements of Section 15 is appropriate because it is consistent with the objective of lowering debt costs for utilities (Company Brief at 8).

## V. STANDARD OF REVIEW

### A. Long-term Debt Approval

In order for the Department to approve the issuance of stock, bonds, coupon notes, or other types of long-term indebtedness<sup>3</sup> by a gas or electric company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess

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<sup>3</sup> “Long-term” refers to periods of more than one year after date of issuance.  
G.L. c. 164, § 14.

whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas & Electric Company v. Department of Public Utilities, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the net plant test.<sup>4</sup> Colonial Gas Company, D.P.U. 84-96 (1984); see also Milford Water Company, D.P.U. 91-257, at 4-5 (1992); Edgartown Water Company, D.P.U. 90-274, at 5-7 (1990); Barnstable Water Company, D.P.U. 90-273, at 6-7 (1990).

The courts have found that, for the purposes of G.L. c. 164, § 14, "reasonably necessary" means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II at 836, citing Lowell Gas Light Co. v. Department of Public Utilities, 319 Mass. 46, 52 (1946). In cases where no issue exists about whether the management decisions regarding the requested financing were the result of a reasonable decision-making process, the Department limits its review under Section 14 to the question of whether proceeds from an issuance will be used for a purpose that, on its face, is reasonable. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990).

The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and

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<sup>4</sup> The net plant test is derived from G.L. c. 164, § 16.

that the Department's authority to review a proposed issuance “is not limited to a ‘perfunctory review.’” Fitchburg I at 678; Fitchburg II at 842, citing Lowell Gas at 52.

Regarding the net plant test, a company is required to present evidence showing that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding, exclusive of retained earnings) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

Where issues concerning the prudence of the Company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

B. Exemption from G.L. c. 164, § 15

Pursuant to G.L. c. 164, § 15, an electric or gas company offering long-term bonds or notes in excess of \$1,000,000 in face amount payable at periods of more than five years after the date thereof must invite purchase proposals through newspaper advertisements. The Department may grant an exemption from this advertising requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, § 15. The Department has found it in the public interest to grant an exemption from the advertising requirement where there has been

a measure of competition in private placement. See, e.g., Berkshire Gas Company, D.P.U. 89-12, at 11 (1989); Eastern Edison Company, D.P.U. 88-127, at 11-12 (1988); Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). The Department also has found that it is in the public interest to grant a company an exemption from the advertising requirement when a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). However, G.L. c. 164, § 15 requires advertising as the general rule, and waiver cannot be automatic, but must be justified whenever requested.

## VI. ANALYSIS AND FINDINGS

### A. Long-term Debt

In regard to whether Bay State's proposed financing is reasonably necessary, Bay State states that the proceeds from the Note will be used to pay down short term debt and refinance long-term debt that has matured (Exhs. BSG-1, at 2; BSG-2, at 3). The Department has found previously that issuing notes for the purposes of paying down short term debt and refinancing long-term debt is a legitimate utility purpose as contemplated by G.L. c. 164, § 14. Berkshire Gas Company, D.T.E. 98-129, at 8 (1999); New England Power Company, D.P.U. 95-101, at 11 (1995). Therefore, the Department finds that Bay State's use of the proceeds to pay down short term debt and refinance long-term debt is reasonably necessary to meet the Company's service obligations and in accordance with G.L. c. 164, § 14.

In regard to the net plant test, the Department requires companies to demonstrate that their net utility plant equals or exceeds their total capitalization pursuant to G.L. c. 164, § 16.

Colonial Gas Company, D.P.U. 84-96, at 5 (1984). As noted in Section III.B, Bay State's net utility plant as of September 30, 2002 was \$466,782,902 (Exh. BSG-8). The sum of the Company's long-term debt, capital stock, and additional paid-in capital was \$269,094,870<sup>5</sup> (Exhs. BSG-6; BSG-8). This results in an excess of net utility plant over outstanding capital of \$197,688,032. Therefore, after the issuance of up to \$50,000,000 in long-term debt, Bay State's long-term debt, total common stock, and additional paid-in capital will not exceed the Company's net utility plant (Exh. BSG-9). Accordingly, the Department finds that the Company's issuance of up to \$50,000,000 in long-term debt meets the net plant test as provided in G.L. c. 164, § 16.

Issues concerning the prudence of the proposed financing have not been raised in this proceeding, and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its customers. The Department's determination in this Order is not in any way to be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs, including interest expense, associated with the proposed financing.

B. Exemption from G.L. c. 164, § 15

Bay State represents that an exemption from the competitive bid provisions of G.L. c. 164, § 15 is appropriate because the Note will bear an interest rate reflective of current market conditions. The Company has demonstrated that the Note's interest rate will correspond

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<sup>5</sup> This total is the sum of \$123,498,000 in long-term debt, \$100 in common stock, and \$145,596,770 in paid-in capital.



to current market pricing being offered companies with financial profiles similar to Bay State (Exh. BSG-2, at 4). Additionally, the interest rate has no mark-up by the lender NiSource Finance, as required by The Public Utility Holding Company Act of 1935 (*id.*).

The Company also has demonstrated that a public placement process would result in between \$500,000 and \$750,000 in underwriting costs and related expenses of between \$50,000 and \$75,000 (Exhs. BSG-2, at 4; DTE-22; Tr. at 78-80). We find this estimate of costs reasonable because of the witness' demonstrated experience and expertise in the area of corporate finance (Exh. BSG-2, at 1-2), and the Department's experience with similar financings. See, e.g., Fitchburg Gas and Electric Light Company, D.T.E. 01-43, at 8 (2001). These costs would be largely avoided through a private placement process, such as through an issuance to Nisource Finance.<sup>6</sup> Therefore, even if Bay State is required to pay a higher interest rate because of NiSource's slightly lower bond rating, the resulting difference would be more than offset by the avoidance of these underwriting and related costs (Tr. at 60-61; AG-RR-2).

Under current market conditions, debt issues with a face value of less than \$200,000,000 to \$250,000,000 have limited investor appeal (Tr. at 148). Moreover, to the extent that an institutional investor would have any interest in Bay State's proposed financing, the lack of liquidity for a debt issue of this size would result in an additional premium being demanded by the investor ranging between 25 and 50 basis points (Tr. at 60-61, 152).<sup>7</sup> Given the relatively

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<sup>6</sup> The recent credit spreads used by underwriters indicate a credit spread between Bay State and NiSource, Inc. of between 25 and 50 basis points (AG-RR-1).

<sup>7</sup> Based on current rates, the interest rate associated with a private placement would be 35 basis points higher than an intercompany transaction (AG-RR-2).

small size of the Company's proposed issuance, the Department is satisfied that a solicitation for competitive bids for public placement would generate little investor interest and result in a higher overall cost of capital (Exh. BSG-1, at 3; Tr. at 147-148).

In light of the foregoing considerations, the Department finds that a competitive bidding process would not provide any advantages for ratepayers over those offered by the Company's placement process through NiSource Finance, and would result in higher debt costs for Bay State. Therefore, the Department finds that it is in the public interest to exempt the Company from the advertising requirements in G.L. c. 164, § 15. Nonetheless, because the precise interest rate and term of the Note remain to be determined, the Department directs the Company not only to provide the Department with a copy of the final version of the Note but also to provide a description of how the interest rate and the term of the Note were determined. Because the rules promulgated pursuant to The Public Utility Holding Company Act of 1935 prevent the lender NiSource Finance from marking up the interest rate of the Note, the Department finds it unnecessary to impose the interest rate restriction sought by the Attorney General and Local 273. 17 C.F.R. § 250.90.

C. Local 273's Request for Investigation

As discussed in Section II of this Order, Local 273 requests the Department undertake an investigation of Bay State's financial condition and management (Local 273 Brief at 5-7, 9-10). Local 273 states that since Bay State's affiliation with NiSource, Inc., its bonds have been downgraded, its staffing levels have dropped, customer walk-in centers have been closed, and its infrastructure investment has declined (id. at 5). Furthermore, Local 273 contends that there is a

lack of structural barriers and regulatory mechanisms to preserve Bay State's cash for serving the needs of Bay State ratepayers (id. at 9-10).

The Department has general supervision over all gas companies and shall make all necessary examination and inquiries into the manner in which they are managed. In fact, the Department has recently exercised this supervisory role with respect to Bay State. The Department has received comments from elected officials and Local 273 regarding what they see as Bay State's reductions in staffing levels, service quality, and public safety. By letter dated December 30, 2002, the Department is requiring Bay State to expedite its annual service quality report and to submit it to the Department no later than January 31, 2003. Because the impending review may well address some or all of the issues raised by Local 273 in this proceeding, the Department declines to open a second investigation of Bay State at this time.

## VII. ORDER

Accordingly, after due notice, hearing and consideration, the Department hereby:

VOTES: That the issuance and sale by Bay State Gas Company of unsecured promissory note(s) not in excess of \$50,000,000 aggregate principal amount is reasonably necessary for the purposes for which such issuance and sale has been authorized, pursuant to G.L. c. 164, § 14; and

VOTES: That the issuance of the unsecured promissory note(s) is in accordance with G.L. c. 164, § 16 in that the fair structural value of the Company's property, plant, and equipment held by the Company, will exceed its outstanding stock and long-term debt; and

VOTES: That it is in the public interest that the issuance and sale of said unsecured promissory note(s) be exempt from the requirements of G.L. c. 164, § 15; and it is

ORDERED: That the Department approves and authorizes the issuance and sale by Bay State Gas Company, in conformity with all the provisions of law relating thereto, of up to \$50 million principal amount of unsecured promissory notes maturing no later than twenty (20) years from issuance, and carrying an interest rate not to exceed 7.75 percent; and it is

FURTHER ORDERED: That Bay State Gas Company be exempt from all of the requirements of G.L. c. 164, § 15, as amended, with respect to the issuance and sale of said unsecured promissory note(s); and it is

FURTHER ORDERED: That the net proceeds from such sale of all such unsecured promissory note(s) shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED: That the Secretary of the Department shall within three days of the issuance of this Order cause a certified copy of it to be filed with the Secretary of the Commonwealth; and it is

FURTHER ORDERED: That Bay State Gas Company provide the Department with a copy of the final version of the Note along with a description of how the interest rate and the term of the Note were determined; and it is

FURTHER ORDERED: That Bay State Gas Company comply with all other directives contained in this Order.

By Order of the Department

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).